**THE HON'BLE SRI JUSTICE C.V. RAMULU**

**+W.P..No.35783 of 1997**

%Dated 21-6-2007

# Between:

A.V. Vinod Kumar … Petitioner

and

The Executive Committee of the
Central Warehousing Corporation
(A Govt.of India Undertaking)
Warehousing Bhawan,
4/1, SIRI Institutional Area,
Hauz Khas, New Delhi-110 016
and another …
Respondents

!Counsel for the petitioner : SHRI MEHER CHAND NOORI

^Counsel for Respondents: SHRI G. RAMACHANDER RAO

<GIST:

> HEAD NOTE:

? Cases referred

1. AIR 1999 SC 2362
2. 2001(2) ALT 603
3. 1995(2) An.W.R.178
4. 2006(10) SCC, 346
5. 1985(1) SLJ 471
6. 1989 Lab.I.C. 224
7. AIR 2004 SC 2321
8. 2006(6) SCC 207

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**ORDER:**

This Writ Petition is filed seeking a Certiorari to call for the records relating to Proceedings No.CWC/XIII-8/17/85/AV/26, dated 24-12-1991 of the 2nd respondent as confirmed by the 1st respondent in his Memorandum No.CWC/XIII-8/17/85/AV/1125, dated 3-8-1995 and the Proceedings No.CWC/XIII-8/Misc/Gen/97/AV/1000, dated 12-8-1997 of the Senior Assistant Manager (Vigilance) of the Central Warehousing Corporation, New Delhi and quash the same as arbitrary and illegal.

Though the petitioner made a challenge to various orders, the only question that falls for consideration, in this Writ Petition, is whether, while imposing a minor penalty of censure, the competent authority was correct in treating period of suspension as 'not on duty' and the petitioner is not entitled for full wages.

It appears, the petitioner while working as a Senior Assistant Manager (G), Central Warehousing Corporation, Regional Office, Lucknow, was suspended from service by an Order dated 11-11-1985. Thereafter, a charge sheet was issued and a detailed enquiry was conducted. The disciplinary authority, by an Order dated 24-12-1991, held that use of intemperate language while sending communications to seniors is not expected from a Group 'A' Officer, who is supposed to be at a higher intellectual level than an ordinary worker. The misconduct is quite serious. However, keeping in view the young age

of the petitioner, a lenient view was taken so as to afford him an opportunity to improve his behaviour and to be careful in his work in future and was imposed with a minor penalty of Censure. However, it was held that the period of his suspension will not count as period 'spent on duty' and he will not be paid anything over and above the subsistence allowance granted for the period of suspension. Aggrieved by the same, he had filed an appeal and the same was rejected by an Order dated 3-8-1995 of the 2nd respondent. However, the petitioner made a representation to the Senior Assistant Manager (Vig), Central Warehousing Corporation, New Delhi seeking payment of full salary for the suspension period and to treat the period of suspension as on duty, but the same was also rejected on 12-8-1997. Challenging the said orders, the present Writ Petition is filed.

A detailed counter affidavit is filed on behalf of the respondents denying the allegations made by the petitioner. It is asserted that the very Writ Petition is not maintainable, since no part of cause of action arose in the territorial jurisdiction of this Court.

Learned counsel for the petitioner strenuously contended that the respondents have no authority under the law, while imposing punishment of censure, to treat the period of suspension as not on duty and to hold that the petitioner is not entitled for anything over and above the subsistence allowance paid. In fact, the very suspension was not warranted in view of minor misconduct and there are guidelines from the Government of India not to suspend an employee against whom a minor punishment is required to be imposed. Therefore, the impugned orders are liable to be set aside and the petitioner is entitled for full wages for the period he was under suspension and the period of suspension be treated as on duty. Further, the Writ Petition is very much maintainable and the Offices of

the respondent-Corporation are located at Visakhapatnam and Hyderabad and the impugned orders were communicated while the petitioner was working at Visakhapatnam and Hyderabad. Therefore, a part of cause of action arose within the territorial jurisdiction of this Court and as such, the Writ Petition is maintainable.

Whereas, learned counsel for the respondents contended that the very contention of the petitioner that no suspension could have been ordered by the competent authority, where the punishment required to be imposed is only censure, even if the misconduct is proved, is misconceived. The Circulars issued by the Central Government, as referred to by the learned counsel for the petitioner, have no relevance, since they are not adopted by the respondent-Corporation. Further, the very Writ Petition is not maintainable, in view of the fact that no part of cause of action had arisen within the territorial jurisdiction of this Court and it is liable to be dismissed on this count alone. In support of his contention, he placed reliance on the Judgments reported in **C.B.I. ANTI CORRUPTION BRANCH, MUMBAI v. NARAYAN DIWAKAR**[1], **R. VENKATESWAR RAO v. UNION OF INDIA**[2], **PAWAN KUMAR SINGH v. UNION OF INDIA**[3], **UTTARANCHAL FOREST RANGERS' ASSN (DIRECT RECUIT) v. STATE OF U.P.**[4]. Learned counsel further contended that the competency of the authority from suspending a person for the purpose of conducting an enquiry into the matter cannot be challenged on the ground that the punishment, which was imposed was minor and, therefore, there was no necessity of suspending an employee. Any charge levelled against an Officer depends upon the enquiry conducted and a decision is taken by the disciplinary authority at the end of the enquiry. Therefore, it is not correct on the part of the

petitioner to contend that the competent authority has no power to suspend the petitioner from service. Further, the competent authority while imposing the punishment of censure, in the circumstances of the case, though the charges are serious in nature, treated the period of suspension not as on duty, which cannot be said to be either illegal or arbitrary. It is within the domain of the powers conferred on the competent authority. Therefore, the Writ Petition is devoid of any merit and is liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the impugned Orders and other material made available on record.

Admittedly, the petitioner was suspended and charge sheeted for the misconduct committed by him while he was working as Senior Assistant Manager (G), Central Warehousing Corporation, Regional Office at Lucknow. The suspension order was revoked by the 2nd respondent by an Order dated 2-4-1987 and the petitioner was directed to report for duty at Central Warehouse, Chandausi. It appears, thereafter, he was transferred as Senior Assistant Manager (G), Central Warehouse, Unit-II, Visakhapatnam. The Order dated 24-12-1991 passed by the disciplinary authority at New Delhi was communicated to the petitioner while he was working at Central Warehouse Unit-II, Visakhapatnam. Further, he filed an appeal from Visakhapatnam and the same was rejected by an Order dated 3-8-1995 and communicated to the petitioner while he was working as Deputy Manager (G), CWC, Regional Office, Hyderabad. Likewise, the representation dated 23-7-1997 filed by the petitioner seeking payment of full salary for the suspension was filed while he was working at Hyderabad and the Order dated 12-8-1997 passed by the

Senior Assistant Manager (Vig.), CWC, New Delhi was communicated to the petitioner while he was working at Hyderabad. Thus, when the petitioner was working at Visakhapatnam, the final order of punishment was got effected. Further, the orders passed in the appeal and mercy petitions were communicated to him while he was working at Hyderabad. Under those circumstances, it cannot be said that no part of cause of action had arisen within the State of Andhra Pradesh for invoking the territorial jurisdiction of this Court under Article 226 of the Constitution of India. Further, it is well settled that unless and until an order is communicated, it cannot be said that it comes into effect. This view is fortified by the Judgment of a Division Bench of Kerala High Court in **UNION OF INDIA & OTHERS v. P.KUNHABDULLA**[5] wherein it was categorically held as under:

> "10……..In all these cases, the order impugned though passed outside the jurisdiction of the particular Court concerned, was served on the petitioners in those cases in a place within the jurisdiction of the Courts in which the Writ Petitions have been filed. The effect of the order by governmental authority fell on the petitioners at places where the Courts had jurisdiction. Thus, the principle that the Court can exercise jurisdiction in respect of such mattes as part of the cause of action had arisen within the jurisdiction over which they could exercise jurisdiction is clearly stated. Part of the cause of action to challenge the impugned order of removal from service arises in the State where the order becomes effective by service on the employee. Therefore, where the impugned order is made by an authority in one State, but it becomes effective on service in another State, the High Court in the latter State shall also have jurisdiction as part of the cause of action arises therein."

To the same effect is the Judgment of a Division Bench of Gujarat High Court reported in **M.F.I. (INDIA) LTD., AHMEDABAD v. M.D. JUVERKAR**[6] wherein it was held as under:

> "18. …….that passing of a dismissal order is not enough, it cannot become effective unless it is published and communicated to the concerned employee. If an order of dismissal remains on the file

> of the authority passing it, it would not have effect unless the concerned employee is informed about the same and told not to report for work…..Therefore, one of the essentials of an effective dismissal order is communication thereof to the concerned employee and this, in our view, constitutes an important link in the chain of events constituting the cause of action. We are, therefore, of the opinion that the learned single Judge was right in coming to the conclusion that since the impugned order of dismissal was served on the respondent-employee at Ahmedabad and the Ahmedabad unit of the Company was directed to pay 90 days' notice pay to him, the respondent-employee was entitled to move this Court for an appropriate relief necessitated on the communication of the impugned order."

In the Judgment reported in **KUSUM INGOTS & ALLOYS LTD. V. UNION OF INDIA**[7] after surveying the entire case law on the subject, as a principle, the Supreme Court held that even if a fraction of cause of action arose within the territorial jurisdiction of a particular High Court, it can entertain a Writ Petition under Article 226 of the Constitution. It is also necessary to refer to the recent Judgment of the Apex Court reported in **OM PRAKASH SRIVASTAVA v. UNION OF INDIA**[8] wherein it was held as under:

> "**12.** The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action……."

From the said decisions, it is clear that even if a part/fraction of cause of action to challenge the impugned order arose within the territorial jurisdiction of a particular High Court, that High Court can entertain a

Writ Petition under Article 226 of the Constitution of India In this case, as noticed above, the final order of punishment was served on the petitioner at Visakhapatnam, which is within the territorial jurisdiction of this Court. That apart, this is not a case where the petitioner was suspended and enquiry was conducted in the territorial jurisdiction of other High Court and the order of punishment was merely served on the petitioner at his permanent address, which is located within the territorial jurisdiction of this Court and also he was not on the rolls of any of the Offices located within the territorial jurisdiction of this Court. Petitioner is very much an Officer in the respondent-Organization and was working in an Office located within the territorial jurisdiction of this Court, where the order of punishment was effected. Therefore, the objection taken by the learned counsel for the respondents that the Writ Petition itself is not maintainable cannot be accepted and as such, the Writ Petition is very much maintainable. The judgments relied upon by the learned counsel for the respondents, in this regard, have no relevance to the facts of this case and as such, there is no necessity to delve upon the same.

However, I am in full agreement with the submissions made by Sri G.Ramachander Rao, learned counsel for the respondents that the disciplinary authority has all the power to impose any punishment in the facts and circumstances of the case. The power of the disciplinary authority is not in dispute, but the question that arises for consideration is that whether, while imposing minor penalty of censure, the disciplinary authority could have treated the period of suspension as ‘not on duty’ and further, held that the petitioner is not entitled for any amount over and above what was paid towards subsistence allowance.

Censure is a minor punishment something like a warning to be

careful in future. In fact, in the Order dated 24-12-1991, it was stated that a lenient view in the matter was taken to afford an opportunity to the petitioner to improve his behaviour and to be careful in his work in future. While holding so, treating the period of suspension as 'not on duty', cannot be said to have been done in good faith and good conscience. The censure itself is a punishment of a minor nature. To treat the period of suspension as not on duty is a severe punishment, by which the petitioner is denied continuity of service for the purpose of seniority, promotion etc. Therefore, though the disciplinary authority has got power, such power, in this case, was not exercised reasonably and no reasonable person could have treated the period of suspension as not on duty while imposing the minor punishment of Censure.

Under those circumstances, I am of the opinion that treating the period of suspension as not on duty, while imposing a punishment of censure in the disciplinary proceedings, will lead to imposing a major punishment. As such, the action of the disciplinary authority in treating the period of suspension as not on duty is unreasonable and against good conscience. Therefore, that portion of the order dated 24-12-1991 treating the period of suspension (about 18 months) as not on duty, as confirmed by the appellate authority, is liable to be set aside and are accordingly, set aside. Now the Order dated 24-12-1991 as confirmed by the appellate authority on 3-8-1995 shall be read as "that the period of suspension will count as period spent on duty for all purposes including increments, seniority, promotion etc." However, the order denying payment of anything over and above the subsistence allowance granted for the period of suspension shall stand confirmed along with punishment of censure.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

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21-6-2007

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[1] AIR 1999 SC 2362

[2] 2001(2) ALT 603

[3] 1995(2) An.W.R.178

[4] 2006(10) SCC, 346

[5] 1985(1) SLJ 471

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